



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R03-OAR-2018-0042; FRL-9993-30-Region 3]**

#### **Approval and Promulgation of Air Quality Implementation Plans; Maryland; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of a state implementation plan (SIP) submission from Maryland for the 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS or standard). Whenever EPA promulgates a new or revised NAAQS, states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet the requirements of the new or revised NAAQS, or to add any needed provisions necessary to meet the revised NAAQS. These SIP submissions are commonly referred to as “infrastructure” SIPs. The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the Clean Air Act (CAA). EPA is proposing to approve Maryland’s submittal addressing certain infrastructure requirements for the 2010 SO<sub>2</sub> NAAQS in accordance with the requirements of section 110 of the CAA, with the exception of the portion of the submittal pertaining to interstate transport.

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0042 at <https://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Powers, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2308. Ms. Powers can also be reached via electronic mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for SO<sub>2</sub> at a level of 75 part per billion (ppb), based on a 3-year average of the annual 99<sup>th</sup> percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1), states must submit “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” a plan that provides for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address to meet the infrastructure requirements.

## **II. Summary of SIP Revision and EPA Analysis**

On August 17, 2016, Maryland, through the Maryland Department of the Environment (MDE) formally submitted a SIP revision to satisfy the infrastructure requirements of section 110(a) of the CAA for the 2010 SO<sub>2</sub> NAAQS. The SIP submittal addressed the following infrastructure elements for the 2010 SO<sub>2</sub> NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Based on EPA guidance issued on September 13, 2013 (2013 Infrastructure Guidance),<sup>1</sup> Maryland’s infrastructure SIP submittal did not address the following two elements of CAA section 110(a)(2): the portion of section 110(a)(2)(C) pertaining to permit programs, known as nonattainment new source review (NNSR), under part D, title I of the CAA, and section 110(a)(2)(I), referred to as “element (I),” also pertaining to the nonattainment requirements of

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<sup>1</sup> “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),” Memorandum from Stephen D. Page, September 13, 2013.

part D, title I of the CAA. In accordance with EPA's 2013 Infrastructure Guidance, the NNSR permitting program requirement of section 110(a)(2)(C) is to be addressed in a separate SIP. Section 110(a)(2)(I) is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process.

EPA is proposing to approve Maryland's August 17, 2016 infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS for elements under CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not proposing any action in this rulemaking related to the interstate transport requirement of section 110(a)(2)(D)(i)(I). EPA will consider Maryland's 2010 1-hour SO<sub>2</sub> NAAQS infrastructure submission related to the section 110(a)(2)(D)(i)(I) requirements in a separate rulemaking. A detailed summary of EPA's review and rationale for approving Maryland's submittal, with the exception of section 110(a)(2)(D)(i)(I)), may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2018-0042.

### **III. Proposed Action**

EPA's review of this material indicates that MDE's August 17, 2016 infrastructure SIP submittal for CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 SO<sub>2</sub> NAAQS satisfies the infrastructure requirements of CAA section 110(a). EPA is proposing to approve Maryland's infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS for these elements. EPA is not taking action on the portion of the MDE submittal related to transport i.e., section 110(a)(2)(D)(i)(I). EPA is soliciting public comments on EPA's determination that Maryland's infrastructure SIP submittal meets the specific requirements of

CAA section 110(a)(2) as set forth above and discussed in detail in the TSD for this action.

These comments will be considered before taking final action.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed approval of Maryland's infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS, with the exception of section 110(a)(2)(D)(i)(I), does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: April 25, 2019.

Cosmo Servidio,  
Regional Administrator,  
Region III.

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